IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

MACA.No. 956 of 2005()

OPMV.67/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA
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APPELLANT/PETITIONER:

SUMA M.G., W/O.LATE MAJU T.R.,
THAYIL HOUSE, THIDANADU P.O.,
NOW RESIDING AT MARUTHANKUNNEL HOUSE,
PONKUNNAM P.O.

BY ADV. SRI.SAIGI JACOB PALATTY

RESPONDENTS:
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1. C.C.SEBASTIAN, CHERIAPURATH HOUSE,
CHEMMALAMATTOM, THIDANADU P.O.

2. M.D.JOSEPH, MOONNPALLIL HOUSE,
THIDANADU P.O.

3. THE ORIENTAL INSURANCE CO. LTD.,
KANJIRAPPALLY.

4. LAKSHMIAMMA, THAYYIL HOUSE,
THIDANADU P.O.

R1 & R2 BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.
R4 BY ADV.SRI.SHAJI THOMAS PORKKATTIL
R3 BY ADV.SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 08/06/2007, ALONG WITH MACA NO. 979 OF 2005 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.
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M.A.C.A. NOS: 956, 979, 1580 & 1585/2005
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DATED THIS, THE 8TH DAY OF JUNE, 2007.

J U D G M E N T

P.R. Raman, J.

M.A.C.A. Nos. 956, 979 and 1580/2005 arise out of O.P.(M.V.) 67/2000 whereas M.A.C.A. 1585/2005 arises out of O.P. (MV) 56/2001, on the file of the Motor Accident Claims Tribunal, Pala.. Both these original petitions arises out of the same accident and were disposed of by a common award passed by the Tribunal. Since all the appeals are thus connected, they were heard together and are disposed of by this common judgment. However, the issue in M.A.C.A. Nos. 956 and 979 relate to the apportionment of the compensation, and hence the same is dealt with separately in the course of the judgment.

2. The facts in brief for the purpose of the disposal of these appeals are stated as hereunder:

O.P. (MV) 67/2000 was filed under Section 163(A) of the Motor Vehicles Act whereas O.P. (MV) 56/2001 was filed under Section 166 of

the said Act. Petitioner in O.P. (MV) 67/2000 is one Suma M.G., who is the wife of late Sri. Maju, who died in the accident. It was the case of the petitioner that on 6.3.1999 at about 10.30 p.m. , while Sri. Maju was driving Auto rickshaw bearing Reg. No. KL-5G 5560 through Pinnakanadu - Kanjirappally road with the petitioner in O.P. (MV) 56/2001 as passenger therein, a jeep bearing Reg. No. KL-5E 7914 came and hit the auto rickshaw and Maju, the driver of the auto rickshaw sustained serious injuries and later he succumbed to the injuries sustained. The accident occurred due to the rash and negligent driving of the jeep by the first respondent in O.P.(MV) 67/2000 who is arrayed as the second respondent in O.P. 56/2001. One Mr. M.D. Joseph, who is arrayed as the second respondent in O.P. (MV) 67/2000 and as first respondent in O.P. (MV) 56/2001 is the registered owner of the offending vehicle. The jeep, which was the offending vehicle was insured with the Oriental Insurance Co. Ltd., Kanjirappally, which is the third respondent in both the original petitions. It was alleged that the driver of the auto rickshaw who died in the accident was earning an amount of Rs. 4,500/- per month. Petitioner in O.P. 56/20001 who was a traveler in the auto rickshaw, sustained serious injuries and was taken to the Taluk Head Quarters Hospital, Kanjirappally and from there he was referred to the Medical College Hospital, Kottayam and treated as an inpatient for six days.

The contention, however, in O.P. (MV) 56/2001 was that the accident occurred due to the rash and negligent driving of the drivers of both the vehicles.

3. The owner of the jeep and its driver in their written statement contended that the petitioner in O.P.(MV) 56/2001 sustained only minor injuries and that the driver of the jeep was driving the vehicle slowly with proper care whereas the auto rickshaw was driven at a high speed and it hit on the body of the jeep. According to them, the driver of the jeep was having a valid driving licence and badge and the jeep was insured with the third respondent. The Insurance Company contended that the compensation claimed is exorbitant, that the age, occupation, income etc. stated are not correct, that the description of the accident is not correct, the scene mahazar and that criminal case records would clearly show that the accident happened due to the negligence of the deceased driver of the auto rickshaw, that the jeep, though was insured, the policy was void ab initio since it was obtained by suppressing material fact, that the vehicle in question was a commercial one and stating that it is a private vehicle and had those facts been known to the insurer, it would not have issued the policy on the same terms and that there is collusion between the petitioners and other respondents and hence prayed that the claim be dismissed. The

New India Assurance Company Ltd. which is the insurer of the auto rickshaw, admitted the policy. But it was contended that the accident was not intimated to them and the documents were not produced.

4. The petitioner in O.P. (MV) 67/2000, who is the wife of the deceased was examined as PW.1 and Exts.A1 to A17 were marked. RWs 1 and 2 were examined on the side of the respondents besides marking Exts.B1 to B5. Court Exhibits X1 to X3 were also marked.

5. The claimant in O.P.(MV) 67/2000 deposed that her husband was driving the auto rickshaw at the time of the accident and that due to the rash and negligent driving of the jeep it hit on the auto rickshaw and he sustained injuries and succumbed to the same at the hospital. The police has registered a FIR- Ext.A1 against the driver of the jeep. As per Ext.A2 scene mahazar the place of occurrence is 2 metres 30 cm. west from the eastern tar end and 3 metres 17 cm. from the western tar end. Ext.A3 is the report of the AMVI. Ext. A4 shows that the driver of the jeep in question was charge sheeted for the offence of negligence. On a consideration of the materials on record, the Tribunal found that the accident occurred due to the rash and negligent driving of the jeep by its driver and hence he is primarily liable and that the 1st respondent in O.P. (MV) 56/01 being the owner, is vicariously liable. The Policy of Insurance issued by the third respondent

Oriental Insurance Company was produced as Ext.B2. It is the specific contention of the Insurance Company that the policy was obtained by suppression of material facts and that the vehicle was being used as a commercial vehicle whereas the policy was obtained as a private vehicle. Ext. B2 is the policy issued for the period from 10.3.1998 to 9.3.1999 which shows that the said certificate was obtained as a private car and the use of which is not for hire or reward. RW.1 was the Manager of the 3rd respondent Insurance Company during 1998 when Ext.B2 policy was issued. According to him, Ext. B2 policy was issued for a private car. He also deposed that later, it was found that the vehicle was converted into a motor cab or taxi. Ext. B1 is the RC particulars of jeep KL-5E 7914 and Ext. B3 is the copy of certificate of registration. The Tribunal found that Exts. B1 and B3 would show that the vehicle was a new one registered on 8.4.1997 as a private car which was later converted into a taxi and altered as a motor cab with effect from 10.4.1997 According to RW.1 at the time of issuance of Ext. B2 policy, the fact that the vehicle was converted into a taxi was not disclosed or in other words, it was suppressed. However, he has admitted that the vehicle was having bank finance. He has further deposed that for the vehicle having bank finance, renewal notice will be issued one month prior to the period of policy and the renewal instruction with

demand draft will be sent to the Company. If there is any change or alteration, it will be stated in the renewal application and new proposal will be called for from the insured and as per that proposal premium will be charged and the balance premium, if any, will be collected. In this case, however, the conversion of the vehicle was not informed to the Insurance Company by making any new proposal. The Chief Manager of State Bank of Travancore, Trichur was examined as RW.2, who has produced Exts.X1 and X2 - the copy of agreement and the loan application submitted by the owner of the jeep to the bank, respectively, which will show that loan was availed for purchasing a taxi vehicle. RW.2 deposed that the policy was taken for the vehicle by the first respondent in O.P.(MV) 56/01 himself and the same was for a private vehicle. He has also admitted that the vehicle was first registered as a private vehicle and later it was converted as a taxi. According to RW.2 it is the owner of the vehicle who knew that he is purchasing the vehicle for using it as a taxi and hence it was his duty to obtain the policy for a taxi vehicle. He has reiterated that the owner himself has taken the policy by showing the vehicle as a private vehicle. The Tribunal found that the evidence show that the vehicle was altered into a taxi on 10.4.1997 and when Ext.B2 policy was taken on 10.3.1998 it was a taxi vehicle but the policy was taken for a private car. Reference was also

made to Section 149(2) of the Motor Vehicles Act and also to the decision of this Court in **Julian v. Peethambaran** (1997 (2) KLT 763) wherein it was held that a policy obtained for using the vehicle as a private car cannot be used for the purpose of using the vehicle as a contract carriage carrying passengers for hire or reward. Hence Ext. B2 issued being void, the Insurance Company was exonerated as no liability could be fastened on them based on such a policy. Therefore, the owner and driver of the jeep alone were held liable to compensate the claimants and the issue was found accordingly, by the Tribunal.

6. The next issue considered by the Tribunal was as to whether the petitioners are entitled for compensation and if so, what is the quantum. Petitioner in O.P. 56/2001 placed reliance on Exts.A5 and A14 to A17 documents. He was a traveler in the auto rickshaw. Ext.A5 is the wound certificate issued from the Taluk Head Quarters Hospital, Kanjirappally. The injuries noted were lacerated wound 7x1.5 cm. bone deep right parietal area of the head, lacerated wound 2 cm. on right upper eye lid, lacerated wound 3 x 0.5 cm. with contusion medial part of right leg abrasion medial side of left thigh and abrasion back of left forearm. Ext.A14 discharge card shows that he was treated as an inpatient for five days at Medical College Hospital and he suffered sub conjunctival hemorrhage right side

and minimal orbital injury. Ext.A15 shows that the petitioner had undergone treatment for post traumatic head ache. Ext. A16 shows that the petitioner had a corneal scar which is the cause for the refractionary problem. Ext.A17 is the medical bill for Rs. 576/-. Considering the injuries sustained, the petitioner in O.P. 56/2001 was awarded a total compensation of Rs. 17,000/-. As far as the petitioner in O.P. 67/2000 is concerned, the claim was filed under Section 163 A of the Motor Vehicles Act. The deceased was aged 28 years as revealed from the postmortem certificate. The claimant is his wife. The 4th respondent is the mother of the deceased. Ext.A7 is the inquest report. The notional income of the deceased was taken as Rs. 2,000/-. As per the second schedule for persons under the age group of 25-30 with annual income of Rs. 24,000/-, the compensation was worked out as Rs. 4,08,000/- and after deducting 1/3rd for personal expenses compensation for loss of dependency was worked out at Rs. 2,72,000/-. An amount of Rs. 9,500/- was also awarded towards funeral expenses, loss of consortium and loss of estate. Thus an amount of Rs.2,81,500/- with interest at the rate of 9% per annum from the date of petition till realization was awarded towards compensation to the petitioner in O.P. (MV) 67/2000. Out of this, an amount of Rs. 50,000/- awarded to the 4th respondent mother and she was permitted to withdraw the same.

7. The petitioner, who is the wife of the deceased in O.P. 67/2000 is the appellant in M.A.C.A. 956/2005. The contention is mainly against the exoneration of the Insurance Company. Incidentally, a claim for enhancement is also made. As regards the claim for enhancement, the main contention is that the Tribunal ought not have fixed Rs. 2,000/- as notional income of the deceased as against an amount of Rs. 4,500 and according to the appellant, the Tribunal ought to have fixed Rs. 4,500/- as monthly income of the deceased. But in the course of the argument, it was pointed out that if the monthly income is calculated at Rs. 4,500/- per month, her claim under Section 163A itself would not lie as it exceeds the annual income of Rs.40,000/-. Confronted with this position, the appellant did not seriously press this issue. It was then contended that for pain and suffering an amount of Rs. 25,000/ should have been allowed. But we do not find any substance in this contention. The Tribunal, has applied the structured formula and has considered all the relevant aspects of the matter while quantifying the amount awardable. Over and above the amount already awarded, we do not think that the appellant is entitled for any enhancement of compensation.

8. The only remaining question to be decided in this appeal is as to whether the finding of the Tribunal exonerating the Insurance Company

from its liability to pay compensation on facts stated is correct?

9. M.A.C.A. 1580/2005 and 1585/2005 are filed by the owner and the driver of the jeep challenging the finding on the same issue. Though two appeals are filed since the Tribunal disposed of the two claims - O.P. (MV) Nos. 67/2000 and 56/2001- by common award, the issue as stated earlier, is the same. We shall now consider the contention advanced on behalf of the appellants in M.A.C.A. Nos. 1580/2005 and 1585/2005. According to the learned counsel for the appellants, the Tribunal erred in holding that Ext.B2 policy is void. According to him, initially the jeep in question was registered as a private vehicle and originally, the policy was obtained by the owner showing the class of the vehicle as private vehicle, which representation was correct and there was no suppression. It was only later that the jeep was converted into a commercial taxi vehicle and simultaneously the jeep was hypothecated with the State Bank of India, Thrissur Branch and after the hypothication, the policies were received by the Bank Manager directly from the Insurance Company which fact was brought out through the evidence of RWs 1 and 2; but were not properly appreciated by the Tribunal. Hence according to him, in the aforesaid circumstances, the Tribunal could not have found that the owner was guilty of any mis-representation or suppression while renewing the policy. It is

also contended by him that an application requiring production of proposal form was also filed but the same was not produced by the Insurance Company. According to him, those documents, if produced, would show that the proposal was made at the instance of the Manager of the Bank and therefore, if at all there was any mistake the same is solely attributable to the Manager of State Bank of India and the owner is not liable to be faulted with. It is further contended that even assuming that the contentions of the Insurance Company are true, still the insurance Company could not have been exonerated from their liability. He also placed reliance on the decision of this Court in **Oriental Insurance Co. Ltd. v. Nani Janaki** (1998 (2) KLT 836) and sought to distinguish the decision of this Court in **Julian's** case (1997 (2) KLT 763) and contended that the said decision is not attracted to the facts of the present case. The Insurance Company, on the other hand, sought to support the award exonerating them from liability.

10. The only policy which was in force at the time of the accident in respect of the vehicle in question is Ext.B2 produced in the case. Admittedly, Ext.B2 was issued as though the vehicle was a private vehicle and not a commercial vehicle run for hire or reward. The appellants in M.A.C.A. 1580 & 1585/2005 are admittedly, the driver and owner of the vehicle. The policy is issued in respect of the vehicle in question. The

owner of the vehicle was therefore aware that the policy was renewed treating the vehicle as a private vehicle, even though admittedly, the same was converted as a commercial vehicle, at or before the time of renewal. The appellant himself has examined the Manager of the Bank as RW.2 and his own evidence would show that it was the owner who was primarily responsible for insuring the vehicle. If the owner of the vehicle had a case that the Bank was duly informed of the conversion of the vehicle to a commercial one and that the Bank had failed to make the new proposal, that is certainly a matter between the owner and the Bank and in no way advance the case of the appellant as against the Insurance Company. That is a separate cause of action for the appellant to proceed against the Bank, if ultimately he is able to establish that the bank was in any way negligent in carrying out the instructions, if any, given by the owner. We cannot possibly enter a finding on the issue because the Bank is not a party even before the court below or in the proceedings before this court. We only make this observation for the limited purpose of showing that in so far as the only policy in respect of the vehicle being Ext.B2 and admittedly the policy is issued showing the vehicle as a private vehicle and when as on the date of the renewal itself it has run as a commercial vehicle for hire and reward, the contention of the Insurance Company that there is suppression

of material facts and therefore the policy Ext.B2 is void and the finding entered into by the Tribunal in such circumstances, cannot be faulted. Ext.B2 policy having been renewed showing the vehicle as a private vehicle and at the time of accident, it was used as a commercial vehicle for hire or reward and the premium itself is only for a private vehicle, the Insurance Company is right in contending that they would not have issued this policy without paying the premium due for a commercial vehicle and that neither the owner nor the Bank who acted as an agent on behalf of the owner having disclosed this fact to the Insurance Company and made a fresh proposal stating the correct facts, it has to be held that this is a case where there is suppression of material facts and the Insurance Company is entitled to take the benefit of the provisions contained under Section 149(2)(b) of the Motor Vehicles Act, as a valid defence to exonerate them from the liability. Though an application was filed for production of the proposal and it was contended on behalf of the appellant that an adverse inference should be drawn against the Insurance Company, we do not find that any adverse inference could be drawn against the Insurance Company in the facts and circumstances of the case. The Manager of the Insurance Company, who was examined as RW.1, deposed before the Tribunal that there was no fresh proposal made and if only at the time of renewal of the

policy any change in the circumstances is brought out to the notice of the Insurance Company that they will call for a fresh proposal. In this case, even the Bank Manager had no case that the Insurance Company was informed of any such change in the user of the vehicle and as such there was no fresh proposal at the time of renewal. If so, the non production of a document which is not in existence in no way could advance the case of the appellant. In the absence of any fresh proposal, no adverse inference could at all arise to be drawn against the Insurance Company for its non production. Accordingly, we reject this contention.

11. **Oriental Insurance Co. Ltd. v. Nani Janaki** (1998 (2) KLT 836) was a case where the vehicle was insured as a private car and the Insurance premium was also paid on that basis. Subsequently, the owner altered the character of the vehicle and thereby used it as a contract carriage. The appellant Insurance Company contended that there is violation of the provisions contained in Section 96(2)(c). It was held that what is contemplated under Section 96(2)(c) of the Motor Vehicles Act is that the policy must have been obtained by the party as a result of the non-disclosure of material facts at the time of obtaining the policy. On 14.7.1996 it was used as a private car when the policy was issued. It was only subsequently on 31.7.1996, that the character of the use of the vehicle

was changed. It was held on facts that from the allegations, it cannot be said that the owner of the vehicle misrepresented on 14.7.1996 ie. at the time of obtaining the policy. The said decision has no application to the facts of this case as rightly held by the Tribunal.

12. In this case, at the time of renewal of the policy, the earlier policy had expired and the policy was renewed for a subsequent period and at the time of its renewal, admittedly, the vehicle had already been converted as a commercial vehicle for hire or reward. Therefore, even at the time of renewal of the policy, the vehicle having been used as a commercial vehicle, whereas the policy was issued for the period in question as a private vehicle and thus even as on the date of renewal, there was a suppression of material facts. In **Julian v. Peethambaran** (1997(2) KLT 763) a Division Bench of this Court held as follows:

> "Under Section 94 of the Act, no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle by that person or that other person as the case may be, a policy of insurance complying with the requirements of Chapter VIII. The requirements contemplated under the provisions are (i) there must be a valid, effective and enforceable policy and (ii) such policy must cover the use of the vehicle by the person using it at the time and place and the manner in which it is being used. That means insurance for one purpose would not enure

> for the other purposes. Consequently, a policy obtained for using the vehicle as a private car cannot be used for the purpose of using the vehicle as contract carriage carrying passengers for hire or reward."

13. As we have already found, at the time of renewal of the policy, the vehicle in question was being run as a contract carriage and at the same time, the policy was renewed as a private car without disclosing the fact that conversion had already taken place even before the renewal. Thus, the policy having been renewed as a private carriage only whereas it was actually used as a contract carriage, the appellant cannot be heard to contend that the Insurance Company is still liable to satisfy the award.

14. In M.A.C.A. 979/2005, the appellant, the mother of the deceased, challenges the award against the apportionment made by awarding an amount of Rs. 50,000/- alone towards her share. It is the contention of the appellant that she is one of the legal heirs of the deceased and as per the provisions of the Hindu Succession Act she being one of the heirs in Class I is entitled to a share equal to the share entitled to the wife of the deceased.

15. According to the learned counsel for the appellant, the mother of the deceased being a Class I heir, is entitled to an equal share of the amount

of compensation awarded along with the wife of the deceased. We cannot fully agree with this contention for the following reasons: Hindu Succession Act, 1956 deals with the devolution of the estate of a Hindu who dies intestate. Section 8 of the Act prescribes the rule of succession in the case of a male as per which the property of a male Hindu dying intestate shall devolve according to the provisions thereunder. But in the case of death arising out of an accident, the loss is sustained by the family and Section 163(A) of the Motor Vehicles Act confers a right on the legal heirs to claim compensation based on the structured formula as indicated in Schedule II of the said Act. The compensation payable in such case is not an estate of the deceased. The legal heirs themselves claim compensation as of right for the loss they sustained owing to the death of the victim caused due to the accident. Hence merely because the mother is also a Class I heir, the apportionment of the compensation amount is not governed by the rules prescribed under the Hindu Succession Act. What then will be the proportion in which the legal heirs could share the compensation amount will arise for consideration. The compensation for the loss of life of the victim, in terms of money would depend on the relationship and the dependency of the claimant on the income of the deceased and all the legal heirs cannot be equated for this purpose. Among other things, the wife

suffers the loss of consortium, the children loses their affectionate father on whom they would be dependent for all their needs, the parents may be dependent on their deceased son. Section 168 of the Motor Vehicles Act says that the "Tribunal **may** make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid. So, it is the Tribunal that is empowered to apportion the compensation among the various legal representatives and the statute does not contain any guideline for the apportionment. Now the question is on what basis should the Tribunal apportion the compensation among the claimants? One view is that it is the dependency status of the claimants that must act as a guide in apportioning the amount of compensation by the Tribunal. According to this view, the consideration would depend not only on the relationship of the claimant with the deceased; but also the extent of their dependency, their future requirements, age and other related circumstances. Such a view was taken by the Andhra Pradesh High Court in **Thota Veera Raghavaiah** v. **National Insurance Company** (1994 ACJ 476 (AP) DB and the Bombay High Court in **Abdul Rahiman v. Dayaram** (1989 ACJ 806 (Bom.) (DB). Subscribing to that view, the Punjab & Hariyana High court denied

compensation to an adult son who was not dependent on the deceased as also to married daughters who were living with their husbands. (See **Bhagwani Devi v. Krishna Kumar Saini** (1986 ACJ 331) (P&H), **Gurdial Kaur v. Atma Singh (1987 ACJ 245 (P&H).** This view is also supported by the decisions of some of the other High Courts. A non dependent parent was denied compensation in Jagadish v. Pokhar (1992 ACJ 266) by the Rajasthan High Court. Another view is that compensation should be apportioned among the legal representatives on the basis of the law of succession as applicable to them. See **Hansraj v. Neelam Chopra** (1986 ACJ 152 (P& H)). In **Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai** (1987(3) SCC 234) it was held that in the absence of Class I heirs (in the case of Hindu male who died in the accident) Class II heirs will be entitled to claim compensation - though such a person may not be dependent on the deceased. There is yet another view that apportionment is to be made on the basis of the dependency plus personal law. The losses were grouped into two categories namely, loss of dependency and loss to the estate. However, loss to the estate component comprises of nominal amounts only towards pain and suffering in case of time lag between the date of accident and date of death, loss of expectation

of life etc. The proponents of the hybrid method suggest that the dependency portion of the compensation award may be distributed amongst the legal representatives on the basis of their actual dependency status and the loss to the estate part of the award may be divided or distributed among the legal representatives as per the provisions of the law of succession as applicable to them. A Division Bench of the Gujarat High Court in Ranchhodbhai Somabhai v. Babubhai (1982 ACJ (Supp) 548) applied the above reasoning to the facts of that case. The Andhra Pradesh High court in Chairman, Andhra Predesh S.R.T.C. v. Shafia Khatoon (1985 ACJ 212) adopted a similar approach.

16. Having considered the divergent views expressed above by the different High courts, we are of the view that compensation in the case of death of the victim under Schedule II, the substantial amount is towards dependency benefit and has to be assessed adopting a proper multiplier having due regard to the age of the victim and his income and that amount cannot be understood as the loss of estate of the deceased. Further compensation towards loss of consortium is a benefit available to the spouse only. In this case, compensation for loss of estate of the deceased is fixed at Rs. 2,500/- which alone, if at all, can be divided in equal proportion by the legal heirs according to the law of succession applicable.

In other words, hybrid method will be appropriate while dividing the compensation among the heirs. So viewed, the mother will be entitled to half the amount of Rs. 2,500/- being the compensation for loss of estate. Thus we find that out of the total compensation of Rs. 2,81,500/- the appellant will be entitled to a further amount of rs. 1,250/- being 50% of the compensation awarded towards loss of estate.

17. Regarding the dependency benefit mother can't claim equal amount with the wife and children of the deceased. In this case mother is aged 62 years. So the compensation of an amount of Rs. 50,000/- is considered as just and equitable towards her share of compensation. Even though an argument was raised by the appellant that even in the case of a heir other than the wife and children, age of the victim alone will be relevant and hence the age of the dependent parent may not be a relevant factor, we are of the view that this issue does not arise in the present case since the claim is by the wife of the deceased and hence for the purpose of declaring the compensation the age of the victim will be relevant in adopting the suitable multiplier but that does not mean that the compensation so determined is to be shared by all the legal heirs in equal shares ignoring the fact that the mother who is now aged 62 years could not be expected to be a dependent for the same period as the wife or

children would have been. M.A.C.A. 979/2005 is disposed of as above.

18. As regards M.A.C.A. 956/2005, we held that the appellant is not entitled for any enhancement of compensation awarded by the Tribunal. We do not find any reason to interfere with the finding of the Tribunal exonerating the Insurance Company, on the facts established in the case. M.A.C.A. 1580 & 1585/2005 are dismissed.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-